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12 **UNITED STATES BANKRUPTCY COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

In re:)	
	)	Bankruptcy Case
PG&E CORPORATION	)	No. 19-30088 (DM)
)	
- and -	)	Chapter 11
)	
PACIFIC GAS AND ELECTRIC	)	(Lead Case)
COMPANY,)	
	)	(Jointly Administered)
Debtors.)	
	)	Date: December 17, 2019
	)	Time: 10:00 a.m.
	)	Place: United States Bankruptcy Court
<input type="checkbox"/> Affects PG&E Corporation	)	450 Golden Gate Avenue
<input type="checkbox"/> Affects Pacific Gas and Electric Company	)	Courtroom 17
<input checked="" type="checkbox"/> Affects both Debtors	)	San Francisco, CA 94102
	)	Judge: Hon. Dennis Montali
<i>All papers shall be filed in the Lead Case,</i>	)	RE: Docket No. 4553
<i>No. 19-30088 (DM).</i>)	

25 **OPPOSITION OF THE UNITED STATES OF AMERICA TO NOTICE OF DEBTORS'**
26 **DESIGNATION OF CLAIMS FILED BY THE UNITED STATES OF AMERICA, THE**
27 **STATE OF CALIFORNIA AND ADVENTIST HEALTH SYSTEM AS**
28 **UNLIQUIDATED AND SUBJECT TO ESTIMATION UNDER SECTION 502(c) OF**
THE BANKRUPTCY CODE

1 The United States of America, on behalf of the United States Department of Homeland
2 Security, Federal Emergency Management Agency (“FEMA”); the United States Department of
3 Agriculture, United States Forest Service (“USFS”); the United States Department of the Interior,
4 Bureau of Land Management (“BLM”) and the National Park Service (“NPS”); the United States
5 Small Business Administration (“SBA”); and the Environmental Protection Agency (“EPA”), hereby
6 files this opposition to the *Notice of Debtors’ Designation of Claims Filed by the United States of*
7 *America, the State of California and Adventist Health System as Unliquidated and Subject to*
8 *Estimation under Section 502(c) of the Bankruptcy Code* (the “Designation”) (Docket No. 4553).¹

10 **BACKGROUND**

11 **Designated Claims Not Subject to the Estimation Proceeding Before the District Court**

12 In the Designation, Debtors listed twenty claims filed by the United States. Of those, eight are
13 Additional Wildfire Claims, i.e., “claims that do not arise from the Wildfires that are subject to the
14 estimation proceedings before the District Court.” *Designation* at 9, lines 17-18. The wildfires
15 underlying these eight Additional Wildfire Claims are El Portal, Railroad, and Murphy. Because these
16 wildfires are not included in the definition of Wildfires in the Estimation Motion, the United States’
17 claims arising from them are not part of the estimation proceeding before the District Court.
18 Accordingly, Debtors acknowledge that they are not seeking to estimate these Additional Wildfire
19 Claims in the estimation proceeding before the District Court. *Id.*, line 19-22.

20 One additional claim, filed by the EPA and the Department of the Interior, is wholly unrelated to
21 any wildfire and therefore, not subject to the estimation proceeding before the District Court as the
22 Estimation Motion seeks only to estimate claims arising from the Wildfires specified therein.
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¹ Terms not otherwise defined herein shall have the meaning ascribed to them in the Designation.

1 For ease of reference, these nine claims of the United States that the Debtors are not seeking to
2 estimate are set forth, with claim numbers, on the attached Exhibit A -- *Debtor Designated Claims of the*
3 *United States Not Subject to Estimation Proceeding Before the District Court.*

4 As the Debtors are not seeking to estimate the claims listed on Exhibit A, *Designation* at 9, the
5 United States will not address whether those claims are unliquidated or otherwise subject to estimation
6 under 11 U.S.C. § 502(c) and reserve all rights in that regard. And like the Debtors, the United States
7 reserves all rights related to those claims' allowance or disallowance and the determination of the
8 amounts thereof.²

10 Eleven Remaining Designated Claims Subject to Estimation Proceeding
11 Before the District Court

12 Of the remaining eleven United States' claims listed in the Designation, the Debtors listed the
13 same claim twice – a BLM claim arising out of the Butte Fire. *Designation* at 4, lines 6-10.
14 Accordingly, the Debtors have designated ten claims of the United States related to the Wildfires as
15 unliquidated and subject to the estimation proceeding before the District Court. For ease of reference,
16 these claims are set forth, with claim numbers, on the attached Exhibit B -- *Debtor Designated Wildfire*
17 *Claims of the United States Subject to Estimation Proceeding Before the District Court.*³

19 Of the ten claims listed on Exhibit B, the United States is not contesting the Debtors' designation
20 of five of those claims as unliquidated and subject to estimation in the estimation proceeding before the
21 District Court but otherwise reserves all rights with respect to that proceeding as well as all rights related
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24 ² In the Designation, Debtors purport to "reserve their rights to supplement" their list of claims.
25 *Designation* at 10-11. Such reservation is ineffectual, as the Order provides no such right. Moreover,
26 the trial in the estimation proceeding before the District Court starts only two months after this Court's
December 17 hearing on the Designation. What claims are part of that trial must be finalized and not
subject to change based upon the Debtors' purported reservation.

27 ³ Each of the proofs of claim listed on Exhibit A and B are expressly incorporated into this
28 opposition. Given the size of the proofs of claim and because PDFs of each can be easily downloaded
from the official claims register on the claims agent's website, the United States opted not file copies
with this opposition.

to those claims' allowance or disallowance and the determination of the amounts thereof. Those five claims are listed in the below table.

Agency	Claim No.	Fire	Amount
FEMA	59692	Camp	\$2,552,285,006.62
BLM	56756	Camp	\$7,721,234.36
BLM	63797	Butte	\$31,469,881.00
SBA	62342	North Bay Fires	\$11,641,027.00 ⁴
SBA	86440	Camp	\$27,774,829.00

For the reasons set forth below, the United States opposes the Debtors' designation of the remaining five claims listed on Exhibit B and maintains those claims are liquidated and therefore, not subject to estimation under 11 U.S.C. § 502(c).

ARGUMENT

If a claim is neither contingent nor unliquidated, it is not subject to estimation under section 502(c). *In re Rhead*, 179 B.R. 169, 172 (Bankr. D. Ariz. 1995) (citing *In re Continental Airlines*, 981 F.2d 1450 (5th Cir. 1993)). The Court has already noted that wildfire related claims are not contingent, because the contingency, the fires, have already occurred. *Hrg Transcript*, August 27, 2019 Status Conference, at 126:20-21 ("And so I believe when a fire occurs, that's the contingency.").⁵ Debtors have asserted only that the United States' wildfire claims are subject to estimation under section 502(c) because they are unliquidated. *Designation* at 3, lines 12-14.

The Bankruptcy Code does not define the term liquidated, but Ninth Circuit law is clear:

⁴ This claim timely amended SBA's previously filed Claim No. 86438, which is the claim Debtors listed in their designation.

⁵ The Court's belief properly reflects Ninth Circuit authority. *Nicholes v. Johnny Appleseed (In re Nicholes)*, 184 B.R. 82, 88 (B.A.P. 9th Cir. 1995) (section 109(e) case); *In re Audre, Inc.*, 202 B.R. 490, 492 (Bankr. S.D. Cal. 1996) (applying *Nicholes* analysis in interpreting contingent under section 502(c)).

“whether a debt is liquidated turns on whether it is subject to ready determination and precision in computation of the amount due.” *Fostvedt v. Dow (In re Fostvedt)*, 823 F.2d 305, 306 (9th Cir. 1987) (citations omitted) (section 109(e) case). Moreover, a debt is liquidated even if liability has not been adjudicated or it is disputed. *Slack v. Wilshire Ins. Co. (In re Slack)*, 187 F.3d 1070, 1075 (9th Cir. 1999) (section 109(e) case). Courts have used the same definition from section 109(e) decisions in interpreting the term unliquidated in section 502(c). *In re Audre, Inc.*, 202 B.R. at 492; *In re Kennan*, 201 B.R. 263, 265 (Bankr. S.D. Cal. 1996).

Liquidated United States’ Claims

NPS Fire Suppression Claims

Of the remaining five designated claims on Exhibit B, three are for fire suppression costs as set forth below. They aggregate \$145,421.20.

Agency	Claim No.	Fire	Amount
NPS	59682	Atlas	\$9,368.42
NPS	63744	Butte	\$33,749.97
NPS	65522	Tubbs	\$102,302.81

Each of these claims are for specific amounts NPS incurred and spent in suppressing the specified wildfire. The amounts reflect two categories of costs – personnel and travel. Attached to the claims is supporting documentation for those costs such as fire fighter time reports, hotel receipts, credit card statements, fuel receipt and mileage logs, and gas station receipts. Simply by looking at this documentation and the amounts reflected thereon, the total amount of each claim is “subject to ready determination and precision in computation of the amount due.” These three claims are clearly liquidated and not subject to estimation.

FEMA Claims

Of the remaining five designated claims on Exhibit B, two are FEMA claims for the recovery of disaster assistance provided pursuant to the Robert T. Stafford Disaster Assistance and Emergency Relief Act, 42 U.S.C. § 5121 *et seq.*, as set forth below. The two claims aggregate \$1,388,185,764.03.

Agency	Claim No.	Fire	Amount
FEMA	59734	North Bay Fires	\$1,227,587,473.81
FEMA	59783	Butte	\$160,598,290.22

As each claim makes clear, the claims asserted are for specific amounts falling within three categories: (1) public assistance, both direct and financial, to the State of California, local governments, tribal governments and certain non-profits for debris removal, emergency protective measures, and the permanent repair/replacement of damaged infrastructure;⁶ (2) individual assistance, both direct and financial, to individuals and households;⁷ and (3) FEMA's direct costs incurred in administering these two assistance programs.

The tables in the attachment to the proofs of claim detail the different components of assistance provided under the three above categories. For example, public assistance is broken down into (1) financial assistance, which is then broken down between counties and the state, and (2) direct assistance, which is then broken down between mission assignment and FEMA commodities. As the claims

⁶ Direct assistance is different from financial assistance in that the federal government itself provides the assistance as opposed to reimbursing the state or a local government the federal share of eligible work performed by the state or local government. A prime example of direct assistance is FEMA, at the request of the State of California, tasking the Army Corps of Engineers with performing private property debris removal after the Tubbs Fire.

⁷ An example of direct individual assistance is FEMA providing temporary housing, e.g., mobile homes and trailers, whereas financial individual assistance is FEMA providing funds or vouchers for individuals to use in securing temporary housing.

1 explain, each of these components of public assistance represents funds that FEMA has recorded as
2 federal obligations in either the (1) Emergency Management Mission Integrated Environment (EMMIE)
3 for financial public assistance, or (2) the Enterprise Coordination & Approvals Processing System
4 (eCaps) for direct public assistance, for the fires identified in the proofs of claim. Both are electronic
5 systems that tie directly into the Integrated Financial Management Information System (IMFIS) where
6 all FEMA obligations are posted for financial reporting purposes. Funds are recorded in EMMIE as
7 federal obligations only after FEMA has approved a state's or local government's Project Worksheet for
8 specified eligible work. Similarly, FEMA records funds as federal obligations in eCaps only after the
9 federal government has either (1) approved assistance for a state or local government and tasked another
10 federal agency to perform the work or (2) provided commodities or equipment to a state or local
11 government. Likewise, individual assistance and administrative costs are broken down in to sub-
12 components and further sub-components reflecting amounts recorded in IMFIS and actually obligated
13 and expended in response to the fires identified in the proofs of claim.
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16 Accordingly, like the NPS claims, the amounts of FEMA's claims are subject to ready
17 determination and precise computation and are therefore, liquidated.

18 CONCLUSION

19 For all of the foregoing reasons, the Court should rule that NPS Claim Nos. 59682, 63744, and
20 65522, and FEMA Claim Nos. 59734 and 59783, are liquidated and not subject to estimation.

21 Date: November 15, 2019

Respectfully submitted,

22 JOSEPH H. HUNT
23 Assistant Attorney General
24 DAVID L. ANDERSON (CABN 149604)
25 United States Attorney
26 ROBIN M. WALL (CABN 235690)
27 Assistant United States Attorney

28 /s/ Matthew J. Troy
RUTH A. HARVEY
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1 Senior Trial Counsel
2 Attorneys for United States

3 **CERTIFICATE OF SERVICE**

4 I hereby certify that on November 15, 2019, I electronically filed the foregoing Opposition with the
5 Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all CM/ECF
6 participants.

7 /s/ Matthew J. Troy
8 Matthew J. Troy
9 Senior Trial Counsel
10 Attorney for United States
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EXHIBIT A

Debtor Designated Claims of the United States Not Subject to Estimation
Proceeding Before the District Court

Agency	Claim No.	Fire	Amount
U.S Department of Agriculture, Forest Service (“USFS”)	59662	El Portal	\$9,895,433.64
USFS	59712	El Portal	\$19,466,029.49
USFS	59664	Railroad	\$21,029,700.59
USFS	63837	Railroad	\$76,554,779.95
U.S Department of the Interior, Bureau of Land Management	62632	Murphy	\$81,167.00
U.S. Department of the Interior, National Park Service (“NPS”)	63092	El Portal	\$3,763,144.49
NPS	63748	Murphy	\$14,170.15
NPS	63756	Railroad	\$90,415.07
EPA/Interior	64169	N/A	\$0.00

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EXHIBIT B

**Debtor Designated Wildfire Claims of the United States Subject to Estimation
Proceeding Before the District Court**

Agency	Claim No.	Fire	Amount
FEMA	59692	Camp	\$2,552,285,006.62
FEMA	59734	North Bay Fires	\$1,227,587,473.81
FEMA	59783	Butte	\$160,598,290.22
U.S Department of the Interior, Bureau of Land Management ("BLM")	56756	Camp	\$7,721,234.36
BLM	63797	Butte	\$31,469,881.00 ¹
U.S. Department of the Interior, National Park Service ("NPS")	59682	Atlas	\$9,368.42
NPS	63744	Butte	\$33,749.97
NPS	65522	Tubbs	\$102,302.81
U.S. Small Business Administration ("SBA")	62342	North Bay Fires	\$11,641,027.00 ²
SBA	86440	Camp	\$27,774,829.00

¹ Without using claim numbers, the Designation listed this claim twice in the exact same amount for the same fire. BLM filed, however, only one claim in this amount – Claim No. 63797.

² This claim timely amended SBA's previously filed Claim No. 86438.